United Nations CAT/OP/DEU/1/Add.1

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
18 February 2014

Original: English

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of the Federal Republic of Germany

Addendum

Replies of the Federal Republic of Germany to the recommendations and requests for information made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its report on its visit to Germany*, **, ***

* The annexes to the present document may be consulted in the secretariat of the Subcommittee.

** The present document is being issued without formal editing.

*** On 13 February 2014, the State party announced its decision to make public its replies to the report of the Subcommittee. The present document is being issued in accordance with article 16, paragraph 2, of the Optional Protocol.

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I. Introduction

1. From 8 to 12 April 2013 a delegation of the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) paid an advisory visit to Germany. The purpose of this visit was to provide advice and offer technical assistance to the German national preventive mechanism (in Germany: the National Agency for the Prevention of Torture in Wiesbaden).

2. On the occasion of the SPT's visit, two meetings with representatives of the Federation and Länder also took place at the Federal Ministry of Justice on 8 and 12 April 2013.

3. Following this visit, by forwarding letter of 29 July 2013, the SPT sent an initially confidential report to the Federal Government, which contains a series of recommendations for improving the performance of the National Agency for the Prevention of Torture.

4. In its forwarding letter, the SPT requested that the German authorities provide a response within six months, i.e. by 29 January 2014, on the status of implementation of these recommendations.

5. The Federal Government hereby submits that response, which is based on the structure of the SPT Report and refers to the margin numbers used therein. The individual answers, however, are grouped according to topic. Each response is preceded by a reference to the relevant recommendations.

II. Response

6. With reference to the recommendations of the SPT contained in paragraphs 26, 28, 32, 34, 36, 38, 40 and 49 of the SPT visit report (CAT/OP/DEU/1) as well as raising other issues, the SPT strongly criticised the resources available to the National Agency for the Prevention of Torture. The delegation urgently recommended that the Federal Republic of Germany better equip the National Agency in terms of both funding and personnel (staff numbers and range of disciplines). The Commission currently does not include experts from the fields of policing, psychiatry, child/youth welfare services, or care.

7. On 12 and 13 June 2013, the 84th Conference of German Justice Ministers (JuMiKo) dealt with the issue of the resources available to the Joint Commission of the German *Länder* for the Prevention of Torture.

8. Starting 1 July 2013, senior civil servant Dr. Helmut Roos (*Ministerialdirigent*) and former senior civil servant Mr. Michael Thewalt (*Leitender Regierungsdirektor*, ret.) were appointed as new members of the Joint Commission.

9. Furthermore, the Conference of German Justice Ministers spoke out in favour of providing the Joint Commission with additional expertise from sectors in which people are deprived of their liberty that do not fall within the remit of the justice system, and aims to increase the number of honorary members from four to eight in total. On behalf of the Conference of German Justice Ministers, Saarland (the *Land* chairing the Conference at that time) called upon the Conference of German Interior Ministers (IMK) and the Conference of German Labour and Social-Affairs Ministers (ASMK) to examine the possibility of making a financial contribution towards this expansion.

10. While the ASMK and IMK announced their desire to participate in the selection of suitable individuals for an enlarged Commission with multidisciplinary competence, they rejected financial participation for the time being, which means that the Conference of German Justice Ministers will now have to decide how to proceed.

11. With reference to the recommendation of the SPT contained in paragraph 52 of the SPT visit report (CAT/OP/DEU/1), the SPT delegation's initially confidential concluding report of 29 July 2013 was sent out to those participating in discussions at the Federal Ministry of Justice at the beginning of August last year, to start with in English.

12. Since Germany as a State Party strictly adheres to the principle of maintaining constructive and trusting dialogue with the various treaty bodies of the United Nations and commissions at the Council of Europe level, Germany followed the SPT's recommendation to publish and widely disseminate the report.

13. A German translation was commissioned and completed in order to facilitate this. Furthermore, it was agreed via official channels with the SPT that the report could be published.

14. By note verbale of 13 December 2013, a letter was sent to the SPT requesting the Subcommittee's permission for publication of the Report. At the same time, Germany's consent to publication by the SPT was also provided in order to enable the report to be released, inter alia, on the website of the United Nations. The Chair of the SPT granted permission for publication by letter of 16 December 2013.

15. On 15 January 2014, after the final version of the English original was published on the SPT's website, both language versions of the SPT Report were sent forthwith to the responsible authorities, alongside the request that these be further disseminated. At the same time they were published on the website of the Federal Ministry of Justice and Consumer Protection. The Report can be viewed in English and German under the following link: http://www.bmj.de/DE/Ministerium/OeffentlichesRecht/Menschenrechte/VereinteNationen/_doc/Vertragsorgane_doc.html?nn=1695012.

16. The Conference of German Justice Ministers received the report on 20 January 2014.

17. With reference to the recommendation of the SPT contained in paragraph 30 of the SPT visit report (CAT/OP/DEU/1), in 2008 the Federal Ministry of Justice set up the Federal Agency for the Prevention of Torture as part of the national preventive mechanism pursuant to the Optional Protocol to the UN Convention against Torture. Initially the Agency was to be headed on an honorary basis by one person only.

18. In order to reduce the workload of the Head of the Federal Agency – former senior civil servant Klaus Lange-Lehngut (*Leitender Regierungsdirektor*, ret.) – and, in particular, to provide cover for Mr. Lange-Lehngut if he is temporarily unable to perform his duties, the Federal Ministry of Justice has now amended the organisational decree on the Federal Agency in agreement with the Federal Ministry of the Interior and the Federal Ministry of Defence in order to provide for the appointment of an honorary deputy. The amendment of this decree was promulgated on 5 June 2013 in the Federal Gazette (see annex 1).

19. The position of Deputy Head of the Federal Agency for the Prevention of Torture is now held by former senior civil servant and former director of Tegel Prison, Ralph-Günther Adam (*Leitender Sozialdirektor*, ret.). Mr. Adam was appointed by State Secretary Dr. Grundmann by letter of 10 June 2013. His appointment is another step forward for the Federal Agency.

20. With reference to the recommendation of the SPT contained in paragraph 42 of the SPT visit report (CAT/OP/DEU/1), on 15 May 2013, the Head of the Federal Agency, former senior civil servant Klaus Lange-Lehngut (*Leitender Regierungsdirektor*, ret.), presented Dr. Birgit Grundmann, State Secretary at the Federal Ministry of Justice, with the National Agency's 2012 Annual Report in Berlin. To mark the occasion, the Federal Ministry of Justice published a press release, which, apart from expressing the State

Secretary's appreciation for the work of the National Agency, also contained a description of the Agency's structure and tasks (see annex 2).

21. The Federal Ministry of Justice and Consumer Protection also supports the Agency as far as possible in other ways. The English translations of the annual reports for submission to the SPT have been funded by the ministry; thanks to this support, the latest annual report has been available in English since September 2013. Furthermore, such assistance is also planned for the next annual report.

22. With reference to the recommendation of the SPT contained in paragraph 20 of the SPT visit report (CAT/OP/DEU/1), the German Federal Ministry of Justice and Consumer Protection plans to host a meeting of the national preventive mechanisms of Germany, Austria and Switzerland on 3 and 4 April 2014, which will allow the participating organisations to discuss their experiences.

23. The topics of this exchange shall include the following:

- Organisation and working methods of the NPMs
- Challenges in fulfilling the OP-CAT mandate
- National preventive mechanisms and the need to strike a balance between independence and working with the authorities
- Visits: questions of preparation, execution and methodology
- Monitoring of measures under the law governing aliens: custody pending deportation and flights for returnees
- Visiting nursing homes for the aged as well as care homes: challenges and initial experiences.

24. With reference to the recommendation of the SPT contained in paragraph 22 of the SPT visit report (CAT/OP/DEU/1), given the NPM's independence, the Federal Government does not see itself in a position to intervene in this respect.

25. With reference to the recommendation of the SPT contained in paragraph 24 of the SPT visit report (CAT/OP/DEU/1), the name is based on the term used in the Optional Protocol, which served as the basis for the creation of this control mechanism.

26. With reference to the recommendation of the SPT contained in paragraph 44 of the SPT visit report (CAT/OP/DEU/1), given the NPM's independence, the Federal Government does not see itself in a position to intervene in this respect.

27. With reference to the recommendation of the SPT contained in paragraph 46 of the SPT visit report (CAT/OP/DEU/1), in accordance with no. 3 of the decree of the Federal Ministry of Justice of 20 November 2008 (as amended on 5 June 2013) the Federal Agency has already been granted all the rights and powers specified in Articles 19 and 20 of the Optional Protocol.

28. The rights and powers of the Joint Commission of the *Länder* are governed in the State Treaty of 25 June 2009:

> Article 2 Tasks and powers
>
> (2) The members of the Commission, individually or together, shall have the powers named in article 19 of the Optional Protocol. The *Länder* shall grant to them the rights and powers named in article 20 of the Optional Protocol.
>
> Article 7 Modus operandi and rules of procedure

The Commission shall issue its own rules of procedure. It shall be free in determining its strategies and modi operandi.

29. Furthermore, the Joint Commission of the *Länder* for the Prevention of Torture has issued its own rules of procedure, which, in section 8 on the conduct of inspection visits, provide the following in subsection (1): "Visits may take place both announced and unannounced".

30. The Federal Government would like to emphasise that the Joint Commission and Federal Agency for the Prevention of Torture are not under any obligation to announce or obtain prior permission for their visits.

31. The Optional Protocol to the UN Convention against Torture includes an obligation for all States Parties to grant the NPM "access to all information referring to the treatment of those persons as well as their conditions of detention" (Article 20 b). Domestic ratifying legislation has implemented this obligation in German law.

32. Germany's *Länder* are aware of the CPT Standards, which include pointers on written records/maintaining files. Furthermore, when they visit Germany (e.g. in 2010 and 2013), delegations of the CPT regularly examine how prisoner and medical records are kept and issue recommendations accordingly. The affected authorities of all *Länder* are informed of these recommendations.

33. With reference to the recommendation of the SPT contained in paragraph 36 of the SPT visit report (CAT/OP/DEU/1), pursuant to Article 19 c) the national preventive mechanisms shall be granted, at a minimum, "the power to submit proposals and observations concerning existing or draft legislation". The ratifying legislation has implemented this power in German law as well.

34. With reference to the recommendation of the SPT contained in paragraph 48 of the SPT visit report (CAT/OP/DEU/1), the Federal Agency already has POCs at the Federal Ministry of Justice and Consumer Protection who can be contacted in all matters. The Conference of German Justice Ministers is responsible for matters pertaining to the Joint Commission.

35. Finally, Germany would like to reiterate that it embraces the SPT's offer of constructive dialogue. The Federal Government is aware that the measures described are only the beginning. Germany will maintain contact with the SPT and provide information on further developments.